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PHILIP MORRIS
EEC REGION
BRILLANCOURT '06' LAUSANNE

INTER-OFFICE CORRESPONDENCE

To: Cynthia von Maerestetten

From: Steven C. Parrish

Date: February 15, 1989

C.C.: See Copy List

Subject: Aho v. Suomen Tuppaka Oy and Oy Rettig Ab

I. Introduction

In connection with your meeting with Geoff, you asked for information regarding the Finland product liability case, Aho v. Suomen Tuppaka Oy and Oy Rettig Ab. What follows is a brief overview of the case, including likely medical testimony on behalf of the defendants and the "media plan" for the case.

II. The Case

A. General

Plaintiff Penttie Kalevi Aho has brought suit against Suomen Tuppaka Oy, a Finnish affiliate of BAT, and Oy Rettig Ab, an RJR licensee. (The case involves a non-RJR brand of Rettig). Amer Tuppaka, our licensee, is not a party to the case.

Aho is a retired construction worker who allegedly began smoking in 1941. He claims to have developed laryngeal cancer as a result of smoking; apparently, he has had his larynx removed. Aho may also have emphysema and lung cancer. The complaint seeks to recover legal expenses and approximately US$122,000 in damages.

It appears that the lawsuit was prompted by the Finnish National Board of Health, the Finnish Cancer Association and Aho's lawyer, a Professor Erkki Aurejarvi of the University of Helsinki Law School. Interestingly, in 1986, the Finnish National Medical Board asked Professor Aurejarvi to prepare an opinion with respect to whether a smoking and health lawsuit against the Finnish tobacco companies would be successful under existing Finnish law. Professor Aurejarvi prepared an opinion, which was made public and of which we have a copy, and concluded that under current Finnish law such a suit would not be successful. Nevertheless, Professor Aurejarvi has advocated that suits be commenced, knowing that they would fail, so that the issue can be publicized and perhaps Finnish law changed. The Aho case appears to be the

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result of that public relations approach. We also have learned that the Finnish Cancer Association has previously sent letters to a great many doctors and hospitals in Finland soliciting suitable plaintiffs for just such a test lawsuit. The Finnish Cancer Association indicated that it will pay all the costs of such a test suit and that the patient would derive all benefits, if any, of bringing the suit.

Generally, all Finnish attorneys whom have been consulted on the issue agree that under current Finnish product liability law, the lawsuit should fail. There have only been a few previous product liability suits of any kind in Finland, however. Also the Finnish legal procedure is different than in other European countries. For example, rather than having a single trial at the end of a period of pretrial discovery, there is a series of evidentiary hearings spread out over perhaps two years.

B. The Hearings

The first hearing in Aho occurred on June 16, 1988, and lasted approximately seven hours. Professor Aurejarvi read for approximately three hours from a 71 page brief that he presented to the court. The "brief" was approximately 5% substance and 95% anti-tobacco propaganda. The arguments echoed the Cipollone complaint and referred, in part, to a 1955 Rettig advertisement which, according to Aurejarvi, promised that Rettig's product "fulfills all requirements of health". Aurejarvi called two medical doctors as witnesses. Neither had seen the plaintiff and were only generally familiar with the hospital records. Nevertheless, they testified that in their opinion the plaintiff's laryngeal cancer was caused by smoking. Defendants did not cross-examine the plaintiff's witnesses, indicating to the court that they would conduct such cross-examination at a later time. Both defendants' lawyers presented short written statements to the court. They emphasized the concept that the plaintiff's claims were only propaganda and an abuse of the Finnish judicial system. They presented to the court copies of Professor Aurejarvi's 1986 opinion to the Medical Board in which he stated the product liability suits against tobacco companies would not succeed under Finnish law.

The second hearing was held on October 6, 1988 and it lasted approximately four hours. Aurejarvi filed a 57 page brief arguing that the industry had violated the law because the "quality" of its tobacco was not what it was supposed to be -- it caused disease. Plaintiff also called two witnesses. Dr. Matti Rimpela testified that although one can never be 100% certain of the cause of a disease, it has been proven that cigarette smoking does cause various illnesses. He testified that since 1950-1951 it has been common knowledge that smoking causes lung and throat cancer, but he

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admitted that there are other causes of those cancers. Rimpela conceded that he had not examined Aho, but had only reviewed some of his medical records. Nevertheless, he testified that he believed Aho's condition was caused by smoking. Ms. Paivi Kaartamo, a lawyer for the Medical Board, testified that the Board had undertaken research relating to smoking and health but the industry had rejected the Board's views and had tried to convince consumers otherwise. According to Kaartamo, this conflicting information has resulted in smokers being less concerned about smoking and health. Ms. Kaartamo also testified that the defendants have violated the Tobacco Act by sponsoring things such as motor sports and thereby advertising in violation of the Act.

The third hearing was held on January 26, 1989. Professor Aurejarvi submitted a 93 page brief focusing primarily on the so-called "information war". Aurejarvi also submitted a legal opinion on product liability by a Professor Routamo. There were two witnesses, Aho's third wife and a Dr. Harry Vertio of the Medical Board. Dr. Vertio testified that it is virtually 100% certain that cigarettes cause disease. Aho's wife testified that Aho now has lung cancer. Mrs. Aho was asked why he continued to smoke after he was warned in 1980. She said that he has "his own head" and will "not listen to anyone". She also said that her husband's personality is such that he would not stop even if so advised by his doctors.

C. The Future

The next hearing is scheduled for March 23. Aurejarvi has indicated that at that time he will present three additional witnesses. It is thought that two of these witnesses may be the remaining members of the Medical Board. According to the Finnish lawyers, the case will not be resolved this year. In fact, they predict that we will not even have to call witnesses this year. We are in the process of trying to learn more about Mr. Aho's employment history, his smoking practices, etc.

In addition, we finally have obtained broad form medical authorizations that will allow us to obtain copies of Mr. Aho's medical records as well as pathology slides, etc. When the records and other materials have been obtained we will have them reviewed by our medical and scientific experts.

There is a committee of lawyers specifically assigned to develop our medical defense. Attorneys for Philip Morris are on the committee (even though our licensee is not a party to the case). Our lawyers have been more active by far in developing the medical defense and recently the attorneys for BAT have also begun work. Our lawyers have met with two

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world class experts on the subject matter of laryngeal cancer. Both experts have very favorable views and both have agreed to testify for the defense. Although we cannot know the precise details of their testimony until they have reviewed the appropriate medical records, etc., we do know that both experts strongly believe there is not proof of a cause and effect relationship between cigarette smoking and laryngeal cancer. Both experts can also discuss factors other than smoking which could be related to Mr. Aho's cancer -- his drinking, for example. We also have a Finnish radiologist who will review Aho's x-rays and assist us in gathering the medical records.

Our lawyers will be meeting with at least 9 potential experts early in March to discuss the Aho case and other matters. The BAT lawyers also are in the process of meeting with potential experts. The "medical committee" meets regularly and coordinates activities closely to assure thoroughness without duplication.

III. Media

There has been some media attention given to the case, although the Finnish lawyers say media interest is waning. The subject of public relations was discussed soon after the case was filed. At that time, based on the advice of Finnish counsel, BAT determined that the best approach was a "low key" one. BAT's Finnish counsel believes it is a mistake to comment on the case outside the courtroom. It was agreed that someone from Suomen would approach the local NMA concerning the hiring of a public relations firm. Last week I spoke with Nick Cannar, general counsel of BAT, about the case and our media plan. Because we are not a party to the case we are not in a position to insist on any particular course of action, but I think Nick now realizes that we have a legitimate interest in what will be said (or not be said) in the media about the case. Nick and I plan to meet before the next hearing to discuss the possibility of implementing a more formal media plan with regard to the case.

Copies: A. Holtzman
F. Newman
L. Pollak
F. Dulles
B. Robinson

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